Supreme Court, U.S.
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In The

Supreme Court of the United States

MARIO ARENAS-MORALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN R. REMIS, JR.
Hawaii State Bar No. 4593
547 Halekauwila Street,
Suite 118
Honolulu, Hawaii 96813
Tel (808) 524-4343

Attorney of Record for Petitioner

EDMUNDO ESPINOZA
California State
Bar No. 64059
Post Office Box 1150
Del Mar, California 92014
Tel (213) 996-8355

Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

I.

Whether the Ninth Circuit Court of Appeals Erred When It Found That The Crime Of "Hostage Taking" Was Completed "From The Time Petitioner Began To Hold The Aliens In A Manner That Was Not Contemplated In The Alien Smuggling Original Agreement."

LIST OF PARTIES

Ms. Tracy Wilkison & Jason Forge Assistant U.S. Attorneys U.S. Courthouse U.S. Attorney's Office 312 North Spring Street Los Angeles, CA 90012	Counsel for Respondent
Solicitor General of the United States Room 5146, Department of Justice 950 Pennsylvania Avenue N.M. Washington, D.C. 20530-0001	Counsel for Respondent
Brian A. Newman, Esquire 300 Corporate Pointe, Suite 330 Culver City, CA 90230	Counsel for Manuel Gonzalez-Garcia
Marcia J. Brewer, Esquire 300 Corporate Pointe, Suite 950 Culver City, CA 90230	Counsel for Salvador Sierra-Velasquez
Robert Ramsey, Jr., Esquire 800 Wilshire Boulevard, Suite 950 Los Angeles, CA 90017	Counsel for Cresencio Martinez-Avendano
Kenneth M. Miller, Esquire Steward & Miller 34700 Pacific Coast Highway, Suite 205 Capistrano Beach, CA 92624	Counsel for Gonzalo Guerrero-Arana

LIST OF PARTIES – Continued

Richard M. Callahan, Esquire 260 South Lake Avenue, Suite 130 Pasadena, California 91101	Counsel for Carlos Garcia-Serrano
Stephen M. Lathrop, Esquire 900 Wilshire Boulevard, Suite 924 Los Angeles, California 90017-4710	Counsel for Ruben Amezcua-Casas
Manuel Gonzalez-Garcia Victorville Medical FCI Post Office Box 5400 Adelanto, CA 92301	In Pro Per

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PETITION FOR WRIT OF CERTIORARI

Petitioner, MARIO ARENAS-MORALES, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on November 22, 2002, in a published opinion under *United States v. Sierra-Velasquez*, 310 F.3d 1217 (9th Cir. 2002).

I.

OPINION BELOW

The opinion of the Ninth Circuit Court of Appeals affirming the District Court was published on November 22, 2002, under *United States v. Salvador Sierra-Velasquez*, 310 F.3d 1217 (9th Cir. 2002), and it is herein attached as Appendix A.

II.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is involked pursuant to Title 28 United States Code Section 1254(1).

The district court had jurisdiction pursuant to Title 18 United States Code Section 3231, as the indictment charged petitioner with offenses under Title 8 and Title 18 of the United States Code. The judgment of the Court of Appeals for the Ninth Circuit was entered on November 22, 2002.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides as follows that *"No person shall be ... deprived of life, liberty, or property without due process of law."*

The statute in question, Title 18 United States Code Section 1203(a), *"Hostage taking"* is unconstitutional as it is void for vagueness as it is applied to the facts of this case.

IV.

STATEMENT OF FACTS

A. Status of the Cases in the District Court.

Petitioner was convicted in two different and separate cases under the same "Hostage Taking" Statute, i.e. *United States v. Mario Arenas-Morales*, Dkt. #01-50155 (CR 00-0877-AHM) and *United States v. Mario Arenas-Morales*, Dkt. #01-50446 (CR 99-1292-GHK).

(1) The First Case.

Petitioner was arrested on December 6, 1999, and was arraigned on a Second Superseding Indictment on February 29, 2002.

The indictment charged petitioner with violation of Title 18 United States Code Section 371, conspiracy to seize and detain illegal aliens, in violation of the "Hostage Taking Act," Title 18 United States Code Section 1203(a); also with violation of Title 8 United States Code Section 1324(a)(1)(A)(v)(1), bringing illegal aliens, harboring them

and concealing them; and with violation of Title 8 United States Code Section 1324 (a)(1)(A)(iii), knowingly shielding the illegal aliens from immigration authorities.

A jury trial was held and petitioner was found guilty on March 23, 2000, of conspiracy to hostage-take, hostage taking, and knowingly shielding the illegal aliens from immigration authorities.

The trial court sentenced petitioner to 420 months (35 years) to the custody of the United States Attorney General.

A timely notice of appeal was filed and the Ninth Circuit Court of Appeals affirmed the district court judgment in an opinion filed on November 22, 2002.

(2) The Second Case.

Petitioner was arrested on December 6, 1999, and a First Superseding Indictment was filed on June 2, 2000.

Petitioner was charged with violation of Title 8 United States Code Section 1324 (a)(1)(A)(v)(1), conspiracy to transport for private financial gain to conceal illegal aliens; also with violation of Title 8 United States Code Section 1324 (a)(1)(A)(ii) and (B)(iii), transporting illegal aliens and causing serious bodily harm to them; also with violation of Title 8 United States Code Section 1324(a)(1)(A)(iii) and (B)(ii), bringing illegal aliens into this country for private financial gain; also with violation of Title 18 United States Code Section 1302(a), "Hostage Taking," and with violation of Title 18 United States Code Section 111(a)(1)(b), using a deadly weapon to assault an immigration agent.

A jury trial was held and on August 31, 2001, petitioner was found guilty of all charges.

The trial court sentenced petitioner to *life imprisonment* to run concurrently to the above mentioned sentence.

A timely notice of appeal was filed and the Ninth Circuit Court of Appeals affirmed the judgment below, in an opinion filed on November 22, 2002.

V.

FACTS OF THE CASE

(1) In the First Case.

The indictment charged that beginning on or about a date unknown and continuing until on or about August 14, 1999, petitioner and his codefendants conspired to knowingly seize and detain illegal aliens, referred in said indictment as "hostages," and to threaten to kill and injure them in order to compel family members to pay money as an explicit and implicit condition for the release of the "hostages."

That petitioner engaged in certain overt acts to accomplish the conspiracy, and that petitioner's acts involved making telephone calls to the "hostages'" family members to demand money for the release of the "hostages." And, that petitioner would do this directly or indirectly through the use of his co-conspirators.

And, furthermore, that one certain conspirator and others, not petitioner, would rape female "hostages."

The allegations were that some co-conspirators would cross the aliens into the United States, some would write

the names of the "hostages'" family members in a notebook including telephone numbers, some guarded the "hostages," and petitioner and others would threaten them with death or physical harm if their families did not pay the "ransom," even to the extent of raping the females to collect the "ransom" demands.

(2) In The Second Case.

Petitioner was charged with being part of an alien smuggling ring which smuggled illegal aliens across the border from Mexico into the United States, and that these aliens were ultimately taken to "drop-houses" in Los Angeles, California.

It was alleged that the ring operated on an unknown date and continued until on or about August 14, 1999.

After the aliens arrived at the "drop-houses" they were concealed in a basement of a residence, kept incommunicado, tightly guarded, physically abused, two women were raped, and were held until their families paid for their release.

Additionally, it was shown that most of the concealed aliens were released after the payment of the previously "agreed-on-fee," but that some were physically abused because their families could not come up with the fee for their release, after demands were made.

The jury, however, entered a special verdict that there had been "no fee-increase," for their release.

VI.

THE RULING BELOW

The ruling of the Ninth Circuit Court of Appeals was ambiguous as it applied to the facts of the cases.

Its ruling concluded that in an alien smuggling case, where there is an already "agreed-on-fee" to cross the aliens into this country, to harbor them and conceal them, and to release them into this country after payment of the fee, that somehow this arrangement turns into a "hostage taking" for "ransom" *"from the time the defendants began to hold the aliens in a manner that was not contemplated in the alien smuggling original agreement."*

In so doing, the Ninth Circuit Court of Appeals essentially merged two separate and distinct statutes, i.e. Title 8 United States Code Section 1324(a)(1)(A)(i), (ii), (B)(1) and (iii), *"alien smuggling,"* and Title 18 United States Code Section 1203(a), *"hostage taking."*

VII.

REASONS FOR GRANTING THE WRIT

As stated above, petitioner argues that the United States Court of Appeals for the Ninth Circuit erred when it ruled that an "average alien smuggling scheme" will turn into a "hostage taking" situation when the smugglers physically harm the agents, while in their harbor, when this harm was not contemplated by the original agreement.

The Section 1203(a) of Title 18 United States Code Section, states in pertinent part as follows:

"(a) . . . whoever . . . seizes or detains and threatens to kill, to injury, or to continue to detain another person in order to compel a third person . . . to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so . . . " shall be guilty of this crime.

The Section 1324 of Title 8 of the United States Code states in pertinent part as follows:

"(1)(A)(i) [any person who] knowing that a person is an alien, brings to . . . the United States in any manner whatsoever, . . . ,

(ii) . . . moves or attempts to transport or move such an alien within the United States . . . ,

(iii) . . . conceals, harbors, or shields from detection . . . , such an alien . . . ,

(B)(i) . . . for the purpose of commercial advantage or private financial gain . . . , [and causing] serious bodily injury . . . ," shall be guilty of this crime.

Basically, both statutes require the same elements such as both require a detention or seizure of the person or alien, both require the continued detention of the person or alien, and both require such continued detention for the purpose of obtaining some financial gain, or other gain.

Here, the Ninth Circuit erred when it ruled that the "alien smuggling" turned into a "hostage taking" just because there were some acts, i.e. physical harm to the aliens while in their custody, because this physical harm was not contemplated in the original agreement between the alien and the smuggler. This interpretation of the statutes is vague.

> *"A statute is void for vagueness when it does not sufficiently identify the conduct to be prohibited. Thus, the Fifth Amendment Due Process Clause requires a statute to be sufficiently clear so as not to cause persons of "common intelligence . . . necessarily [to] guess at its meaning and [to] differ as to its application." Connally v. General Construction Company*, 269 U.S. 385, 391 (1926).

VIII.

CONCLUSION

The Ninth Circuit's interpretation of the aforementioned statutes, and its application to the facts of these cases was erroneous.

THEREFORE, petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Dated: May 27, 2003

Respectfully submitted,

JOHN R. REMIS, JR.
Attorney for Petitioner

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. SALVDOR SIERRA-VELASQUEZ, *Defendant-Appellant.*	No. 00-50749 D.C. No. CR-99-000877- AHM-02
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. CRESCENCIO MARTINEZ- AVENDANO, *Defendant-Appellant.*	No. 00-50750 D.C. No. CR-99-00877- AHM-03
UNITED STATES OF AMERICA, *Plaintiff-Appellant,* v. SALVADOR SIERRA-VELASQUEZ, *Defendant-Appellee.*	No. 01-50030 D.C. No. CR-99-00877- AHM-12

UNITED STATES OF AMERICA, *Plaintiff-Appellant,* v. CRESCENCIO MARTINEZ-AVENDANO, *Defendant-Appellee.*	No. 01-50042 D.C. No. CR-99-00877-AHM-2

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. GONZALO GUERRERO-ARANA, aka Conan; aka Gonzalo Arana-Guerrero, *Defendant-Appellant.*	Nos. 01-50151 01-50157 D.C. No. CR-99-00877-AHM-01

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. MARIO ARENAS-MORALES, aka Marino Arenas-Morales, *Defendant-Appellant.*	Nos. 01-50155 01-50446 D.C. Nos. CR-00-00877-AHM-11 CR-99-01292-GHK(1)

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. MANUEL GONZALES-GARCIA, *Defendant-Appellant.*	No. 01-50432 D.C. No. CR-99-01292- GHK-05
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. CARLOS GARCIA-SERRANO, *Defendant-Appellant.*	No. 01-50448 D.C. No. CR-99-01292- GHK(2)
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. RUBEN AMEZCVA-CASA, *Defendant-Appellant.*	No. 01-50529 D.C. No. CR-99-01292- GHK-6 OPINION

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding
George H. King, District Judge, Presiding

Argued and Submitted
September 9, 2002 – Pasadena, California

Filed November 22, 2002

Before: Mary M. Schroeder, Chief Judge, William A. Fletcher, Circuit Judge, and Charles R. Weiner,* District Judge.

Opinion by Chief Judge Schroeder

COUNSEL

Tracey Wilkison, Assistant United States Attorney, Los Angeles, California; Jason Forge, Assistant United States Attorney, Los Angeles, California, for the plaintiff-appellee-appellant.

Robert Ramsey, Jr., Ramsey & Price, Los Angeles, California, Kenneth M. Miller, Stewart & Miller, Los Angeles, California, Edmundo Espinoza B. Del Mar, California, Brian A. Newman, Law offices of Brian A. Newman, Culver City, California, Richard M. Callahan, Jr., Pasadena, California, Stephen M. Lathrop, Lathrop & Villa, Los Angeles, California, for the defendants-appellants.

OPINION

SCHROEDER, Chief Judge:

These are consolidated appeals from jury trial convictions for conspiracy and hostage taking. Defendant-Appellants, Salvador Sierra-Velasquez, Crescencio Martinez-Avendano, Gonzalo Guerrero-Arana, Mario Arenas-Morales,

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* The Honorable Charles R. Weiner, Senior District Judge, United States District Court for the Eastern District of Pennsylvania, sitting by designation.

Manuel Gonzales-Garcia, Carlos Garcia-Serrano, and Ruben Amezcua-Casa, were all persons engaged in an illegal alien smuggling operation. The record shows that they agreed to take a group of aliens into the United States from Mexico for a fee, and then brutally detained the aliens against their will while demanding that the fee be paid. The principal legal question on appeal is whether their operation constituted hostage taking within the meaning of 18 U.S.C. § 1203(a), or whether hostage taking in the alien smuggling context must be limited to the circumstances we dealt with in *United States v. Lopez-Flores,* 63 F.3d 1468 (9th Cir. 1995).

In *Lopez-Flores,* the defendants agreed to smuggle an alien from Mexico to the United States for a fee. 63 F.3d at 1470. They then took the alien to a different location than was previously agreed upon, and demanded a higher smuggling fee. *Id.* The court found that these circumstances rendered the detention non-consensual and affirmed the conviction. *Id.* at 1477-78.

The defendant-appellants here maintain that there can be no crime of hostage taking unless the defendants increased the agreed-upon amount of the fee, as occurred in *Lopez-Flores. Lopez-Flores,* however, does not limit hostage taking to the facts of that case. It holds only that the elements of the crime of hostage taking were satisfied in that case.

The elements of hostage taking are: (1) a seizure or detention; (2) a threat to kill, injure, or continue to detain; (3) with the purpose of compelling a third person or governmental entity to act in some way or refrain from acting. 18 U.S.C. § 1203(a). All of the elements are satisfied here as well. There was a seizure or detention within

the meaning of § 1203(a) from the time the defendants began to hold the aliens in a manner that was not contemplated in the alien smuggling agreement. At that point, the aliens were no longer consensually in the custody of the smuggling defendants. The record supports the jury's finding that the defendants threatened to kill the aliens, thus satisfying the second element. Finally, defendants made payment demands of the aliens' families. The record supports a finding that the defendants would end the nonconsensual confinement only if the payment demands were satisfied. Thus the evidence was sufficient to support the jury's verdict of guilt on the hostage taking counts.

The evidence was also sufficient to support the convictions for conspiracy. The evidence showed that the defendants took concerted action pursuant to an agreement. The government proved all the elements of the crimes of conviction. The convictions must be affirmed.

Arenas claims that the district court erred when it applied a four-level sentencing enhancement pursuant to U.S.S.G. § 3B1.1(a) for his role as an organizer or leader. The enhancement was fully supported, however, as there was ample evidence that Arenas was a leading figure in the conspiracy. *See United States v. Barajas-Montiel,* 185 F.3d 947, 957 (9th Cir. 1999).

Five of the defendants also challenge the two-level enhancement for victim vulnerability under U.S.S.G. § 3A1.1. There was no error. Defendants argue that because all illegal aliens are vulnerable in some sense, there should be no enhancement. Their argument overlooks the fact that the crime of hostage taking is not limited to taking aliens as hostages. The salient point is that aliens who want to enter this country illegally and

are dependent on their smugglers for entry are more vulnerable than other categories of persons who may be held hostage for ransom. The district court thus properly applied the factors required to impose the enhancement.

Defendants' remaining arguments are without merit.

The government cross-appeals the district court's refusal to apply the ransom enhancement of U.S.S.G. § 2A4.1(b)(1) to the sentences of Martinez, Sierra, and Guerrero. The district court held that these defendants could not foresee an increase in the smuggling fee and that there could be no ransom within the meaning of the guideline unless a price was demanded that was higher than the agreed-upon fee. We agree with the other circuits that have held that the ransom enhancement applies anytime a defendant demands money from a third party for a release of a victim, regardless of whether that money is already owed to the defendant. *See United States v. DiGiorgio,* 193 F.3d 1175, 1178 (11th Cir. 1999); *United States v. Escobar-Posado,* 112 F.3d 82, 83 (2d Cir. 1997). The district court should have applied the enhancement.

Appellants' convictions are AFFIRMED. On the government's cross-appeal, the sentences of Martinez, Guerrero, and Sierra are VACATED and we REMAND for the imposition of the ransom enhancement. The remaining sentences are AFFIRMED.

AFFIRMED IN PART, VACATED IN PART AND REMANDED.